



State of Connecticut
DIVISION OF CRIMINAL JUSTICE

Testimony of the Division of Criminal Justice
Joint Committee on Judiciary – March 24, 2009

In support of:

- **S.B. No. 6341 An Act Concerning Competency to Stand Trial**

The Division of Criminal Justice would respectfully request the Committee's Joint Favorable Substitute Report for S.B. No. 6341 to effect a change to subsection (m) of § 54-56d of the General Statutes.

Section 54-56d subsection (m), which is entitled "Release or placement of defendant who will not attain competency," allows a court to order an incompetent defendant, whose restoration is not a "substantial probability," to be released or to be placed in the custody of the Department of Mental Health and Addiction Services (DMHAS). The statute expressly provides that, if the court orders release or placement of a defendant who is charged with the commission of "a crime that resulted in death or serious physical injury," the court may order periodic examinations of the defendant's competency to continue throughout the time period in which the defendant may be prosecuted.

The Division of Criminal Justice proposes that subsection (m) be amended to also include the periodic examinations of defendants charged with serious sex offenses. In addition to being a good forensic psychiatric practice, this would provide for better monitoring of sex offenders and enhance public safety.

The proposed amendment includes the following statutes as providing a basis for periodic examinations: subsection 2 of § 53-21; subsection 2 of § 53a-60(a); sections 53a-70, 53a-70B, 53a-71, 53a-72a or 53a-72b. The following language would be in addition to the changes already made in the Raised Bill:

(m) If at any time the court determines that there is not a substantial probability that the defendant will attain competency within the period of treatment allowed by this section, or if at the end of such period the court finds that the defendant is still not competent, the court shall either release the defendant from custody or order the defendant placed in the custody of the Commissioner of Mental Health and Addiction Services, the Commissioner of Children and Families or the Commissioner of Mental Retardation. The commissioner given custody, or the commissioner's designee, shall then apply for civil commitment according to sections 17a-75 to 17a-83, inclusive, 17a-270 to 17a-282, inclusive, and 17a-495 to 17a-528, inclusive. The court shall hear arguments as to whether the defendant should be released or should be placed in the custody of the Commissioner of Mental Health and Addiction Services, the Commissioner of Children and Families or the Commissioner of Mental Retardation. If the court orders the release of a defendant charged with the commission of a crime that resulted in the death or serious physical injury, as defined in section 53a-3, of another person, or with a violation of subsection (2) of section 53-21, subsection (2) of section 53a-60(a),

sections 53a-70, 53a-70b, 53a-71, 53a-72a or 53a-72b, orders the placement of such defendant in the custody of the Commissioner of Mental Health and Addiction Services, the court may, on its own motion or on motion of the prosecuting authority, order, as a condition of such release or placement, periodic examinations of the defendant as to the defendant's competency. Such an examination shall be conducted in accordance with subsection (d) of this section. Upon receipt of the written report as provided in subsection (d) of this section, the court shall, upon the request of either party filed not later than thirty days after the court receives such report, conduct a hearing as provided in subsection (e) of this section. Such hearing shall be held not later than ninety days after the court receives such report. If the court finds that the defendant has attained competency, the defendant shall be returned to the custody of the Commissioner of Correction or released, if the defendant has met the conditions for release, and the court shall continue with the criminal proceedings. Periodic examinations ordered by the court under this subsection shall continue until the court finds that the defendant has attained competency or until the time within which the defendant may be prosecuted for the crime with which the defendant is charged, as provided in section 54-193 or 54-193a, has expired, whichever occurs first. The court shall dismiss, with or without prejudice, any charges for which a nolle prosequi is not entered when the time within which the defendant may be prosecuted for the crime with which the defendant is charged, as provided in section 54-193 or 54-193a, has expired. Notwithstanding the erasure provisions of section 54-142a, police and court records and records of any state's attorney pertaining to a charge which is nolle or dismissed without prejudice while the defendant is not competent shall not be erased until the time for the prosecution of the defendant expires under section 54-193 or 54-193a. A defendant who is not civilly committed as a result of an application made by the Commissioner of Mental Health and Addiction Services, the Commissioner of Children and Families or the Commissioner of Mental Retardation pursuant to this section shall be released. A defendant who is civilly committed pursuant to such an application shall be treated in the same manner as any other civilly committed person.

In conclusion, the Division of Criminal Justice thanks the Committee for the opportunity to present testimony on H.B. No. 6341. The Division would be happy to provide any additional information the Committee might require or to answer any questions that you might have.